F. M. S. REPORTS.

ABDUL RAHMAN vs. ESAH.

[Appellate Civil Jurisdiction (Horne, J.) October 22, 1940]

Distribution Enactment (Cap. 71), section 2—Probate and Administration Enactment (Cap. 8), section 188—Evidence Enactment (Cap. 10), sections 13 and 42—Intestacy—Muhammadan law—Local custom, proof of—Widow's share.

The Collector assumed that there was a custom under which the widow of a Malay agriculturist was entitled either to (a) one-half share of her deceased husband's property or (b) this half plus a widow's share under Muhammadan law out of the other half.

Held, that section 2 of the Distribution Enactment and section 188 of the Probate and Administration Enactment imply that the rules for distribution of a Muslim's estate are the rules of Muhammadan law as varied by local custom.

The case of **Haji Ramah v. Alpha**(1) is not an authority for the proposition that the widow is entitled to half share by succession: it is an authority for the proposition that in Selangor a widow who has worked on her husband's land has a claim for monetary compensation which may be proved against his estate.

The existence of local custom may be proved by authoritative decision or by evidence (Evidence Enactment, sections 42 and 13).

There being no evidence as to tribal organisation or as to the alleged custom in Pahang and no authority as to such organisation or custom having been cited, the judgment must be set aside and a re-hearing ordered.

Case referred to:—

(1) *Haji Ramah v. Alpha,* (1924) 4 F.M.S.L.R. 179.

Tengku Ismail for appellant.

Respondent in person.

Horne, J.—This appeal was brought from the order of J. F. F. Gregg, Esq.; made in Kuala Lipis Distribution Suit No. 35 of 1937. The grounds of judgment are very short but appear to me to assume that there is a custom under which the widow of a Malay agriculturist is entitled either to (a) one-half share of her deceased husband's property or (b) this half plus a widow's share under Muhammadan law out of the other half.

The deceased was apparently a Muslim and died intestate, and section 2 of Chapter 71 (Distribution Enactment) and section 188 of Chapter 8 (Probate and Administration Enactment) imply that the rules for the distribution of such an estate are the rules of Muhammadan law as varied by local custom.

So far as I am aware there is no Supreme Court judgment or any other reported judgment as to any local variations of the Muhammadan law rules for distribution in Pahang. The case of *Haji Ramah binti Mat Drus v. Alpha binti Osman & Ors.*(1), was cited during the hearing.

This case is not an authority for the proposition that the widow is entitled to half share by succession. It is an authority for the proposition that in Selangor a widow who has worked on land registered in the name of her husband has a claim for monetary compensation, which, if not satisfied before his death, may be proved against his estate.

In that case, however, although the widow was successful in her claim, succession clearly went according to Muhammadan law. In the present case the claim seems to be based upon an alleged custom as to succession. The suggested custom appears to be an imitation of one of the property rules current among the customary tribes in Negri Sembilan but there is no evidence as to tribal organization in Pahang.

An authoritative decision as to such a custom would be relevant to prove its existence: section 42 Evidence Enactment (Cap. 10). See also *Woodroffe and Ameer Ali,* Law of Evidence, 9 Edition 424. But there appears to be no such decision. Moreover, no evidence was taken before the Collector as to the existence of such custom: section 13 of Chapter 10 and *Woodroffe and Ameer Ali,* page 195 *et seq.*

It was stated during the hearing of this appeal that some Collectors hold that such custom exists; others that it does not exist. If so, it would appear that its existence is doubtful and that litigants who seek to rely upon the alleged custom should prove its existence.

There is no such evidence on the record nor does the Collector refer to any authority, and, as the judgment appears to be based on alleged custom, it is, for the reasons above, set aside and the application for distribution is ordered to be re-heard. At such re-hearing it will be open to the widow to base her claim upon and prove the existence of the custom.

No order as to costs of the appeal.

Appeal allowed. Judgment set aside and re-hearing ordered.

WONG NGIAN THIN vs. P. P.

[Appellate Criminal Jurisdiction (Cussen, J.), September 4, 1940]

The Customs Enactment (No. 5 of 1936), sections 51, 113, 114 and 124—False account of goods imported